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No. 89-254

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

JAMES A. MARKER, JR., AND BEVERLY J. MARKER,

Petitioners,

v.

WAYNE K. RIESCHEL, et al.

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITIONER'S REPLY MEMORANDUM

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PETITIONER'S REPLY MEMORANDUM

Petitioners James and Beverly Marker respectfully reply to the respondents brief. Mr. Wayne K. Rieschel, herein referred to as the respondent, appears to be the only respondent that plans to offer opposition.

After reviewing respondents brief, petitioners find what we believe to be error and must disagree with respondents

brief on almost [illegible]ry point except that portion where he begins his conclusion by requesting "... that this Court carefully review the Petition For Writ of Certiorari filed by petitioners...".

We would be the first to admit lack of experience and writing skills, therefore we respectfully request that this Court look carefully at what we have presented thus far, not only for our sake, but for others so situated.

After careful examination we believe you will see the questions we have presented will have far reaching effects and should be considered by this Court and that the respondent has presented an insufficient opposition to our petition.

RESPONDENTS POSITION

Respondents complain that our petition "...is plagued with numerous procedural insufficiencies..." and rules violations in addition to arguing for upholding the

8th Cir. opinion by selectively overlooking very important points. We will attempt to address each new issue raised.

PROCEDURAL COMPLAINTS ANSWERED

Respondents cite Sup. Ct. R. 28.4 (c) and argue that we should have notified the Attorney General of Missouri. The key words in this rule that we believe respondents did not note are: "...and the State or any agency, officer, or employee thereof is not a party...". The rest of this rule seems conditioned on whether or not any of those listed are a party to the action: "...is not a party...".

When the County was a party and the respondent is the prosecutor (a state official) responsible for answering for the state (p 42)* and the sheriff is also

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* References to pages proceeded by the letter "p" are to the petitioners petition for Certiorari. References to pages proceeded by the letter "r" are to the respondents brief in opposition.

a party it seems that the conditions of Sup. Ct. R. 28.4 (c) are fully met by including the proper parties. This fact seems to be further reinforced by Mo. Rev. Stat. section 56.060 (p 84a 85a) where the state has delegated to the county prosecutors the agency powers to act on behalf of not only the county but the state also. It is no fault of ours that respondent failed to preform his official duties on behalf of the state, that is between them.

Respondents complain under Sup. Ct. R. 21.4 about the length of the petition for writ of certiorari and how it was served, et cetera. The petition was served as instructed by the clerks office. When the petition was filed on the 3rd of August 1989 the clerk returned it for double spacing and other work as per Sup. Ct. R. 33.7 and pointed out that "our time would be preserved" if the corrected

petition was promptly substituted and also that Sup. Ct. R. 33.3 provided for more pages.

A simple examination of the copies mailed the 3rd and 15th of August will quickly reveal they are basically the same, and are copies of the petition for writ of certiorari, and neither is a supplemental brief under Sup. Ct. R. 22.6. The petition was made as short as possible considering my ability and the number of questions involved.

Certainly the respondent would understand no one would take the time or go to the expense of duplicating the same petition unless instructed to do so.

Respondents further complain regarding Sup. Ct. R.19.3. The form supplied by the clerk was served on the respondents the same day it was given to us and in the manner we were instructed by the clerk, showing the August 3rd 1989

docketing date. All the papers filed with this Court so far were hand carried to the clerks office for inspection before submitting them to be certain that if they were not proper we would know of it the same day.

Respondents question about how to figure his time is answered in Sup. Ct. R. 22.1 where it is stated: "Respondent shall have 30 days...after receipt of a petition...". Certainly he knows when he received it, and if not we would have been glad to inform him if his attorney had called us. We have the postal return receipts. I am not sure whether he should have figured the 30 days from the receipt of the first single spaced copies or from receipt of the corrected double spaced copies received by him almost two weeks later on 8/18/89. While respondent complains of our brief I note a number of defects in his own, such as violation of

Sup. Ct. R. 33.5 (b): "...with correct references to the pages where they are cited.", and other errors. But than I understand the human element.

While recognizing that our pro se work is not perfect we would hope that you could see that we tried to put it together to the very best of our abilities and tried to make it as professional as possible, and would agree it is not "plagued" with insufficiencies and that the service of the petition was correct.

SUPREME COURT RULE 17.1 (a)

Respondent cites Sup. Ct. R. 17.1 and complains that we have not met it's requirements (r 22-23). Certainly questions 1 and 2 fully meet Sup. Ct. R. 17.1 (a) as do some of the other questions.

The respondents cite ZITOMER v HOLDSWORTH, 449 F.2d 724, 726 (3rd Cir. 1971), hereafter referred to as

ZITOMER-2, and try to use it to support the lower court action (r 21-22).

The above case was earlier ZITOMER v HOLDSWORTH 178 F.Supp 504, which I will hereafter refer to as ZITOMER-1.

ZITOMER-1 was filed in the 1950's on an action that occurred two years and twelve days before filing, twelve days beyond the Penn. two year statute of limitations. The court allowed the civilian plaintiff to rely on 50 USC App sec. 525 as the defendant was than in the Navy. The civilian plaintiff neglected to make any effort to prosecute his action in ZITOMER-1.

The district court was found correct in dismissing ZITOMER-2 in 1971, an action that occurred in the 1950's and where no stay had been requested or granted. On page 726 the Court notes that there is no evidence to show the defendant is still in service. Had the civilian plaintiff

pressed his action perhaps the military defendant would have requested a stay and the action would have been preserved. Or the civilian plaintiff could have waited until the serviceman got out of the military to file the case and than he would have had two years from military discharge to file his case if he relied on 50 USC App sec. 525. What the 3rd Circuit Court held on page 726 was that sec. 525 did not stay an action and "...has no applicability to an action duly filed and served within the applicable statute of limitations...".

RICARD v BIRCH 529 F.2d 214 (4th Cir. 1975) has no application to our case, which was filed WITHIN the applicable statute of limitations.

The respondents while citing LESTER v UNITED STATES 487 F.Supp. 1033 have selectively ignored the fact that LESTER held that the tolling provision does not

apply to spouses of servicemen.

It would appear that Congress included plaintiffs in 50 USC App sec. 521 for situations just such as ours. Certainly they realized there would be times when the military persons rights could not be protected without including one or more of his dependents or some civilian person who's interests were so entwined with his own, and in such cases a stay may be needed by the military person for the entire action. Non-military plaintiffs and co-plaintiffs can not rely on 50 USC App sec. 525 unless the defendant is in military service. However the lower courts have frequently upheld 50 USC App sec. 521, the stay provision, as covering the whole action and all parties as noted in our petition (p 25-27).

The respondents argue we are free to refile our case later (r 24) and that the District Courts action to dismiss the

case "...properly protect the interest of all parties..." (r 29). They have overlooked my rights under the seventh amendment knowing full well that on page ten (10) of the complaint, that began this action in Nov 1987, that a "Demand for Jury trial" was made very plainly near our signatures, and near where the complaint was notarized in Florida. 50 USC App sec. 525 will not protect my interests in this action and we do not believe it will protect Major Marker in a cause of action in which a case has already been filed within the applicable statute of limitations (p 17-21).

SUPREME COURT RULE 17.1 (c)

The remainder of the questions we believe you will find meet Sup. Ct. R. 17.1 (c) and are covered in our petition.

Respondent argues for abstention. If you have read Attorney Lynch's letter (p 41a-47a) and the excerpts from our

complaint (p 33a-39a) and our petition one can see that state property rights are not part of this action and the principles of abstention were not appropriate in this case (p 38-40).

Constitutional questions are raised in questions four and seven. It was clear to respondent that we were questioning "civil practice" in Mo. rev. Stat. sec. 56.360, however he seems to have not noticed or understood our other challenges under question seven (p 40-55). We also question the method of selecting Judges and prosecutors (p iii 7b), and custom and usage/negligence (p iv 7c).

In a county area where white supremacist groups are very active, the county seat is around 2,000, and the sheriff, prosecutor, Judge and Circuit Judge, all grew up there in the county, and are voted into office by their friends and family and depend on them for

their job and living, and where todays decisions can influence the next election an outsider with different values, family and friends of other races is at an unfair advantage to say the very least.

When the military outsider lives in an extremely remote location near the end of the county road and phone service is limited to that shared with their adversarys, they find they have no access to their house or means to call for help that their adversarys can not easily compromise. This is extremely difficult when there is no support group of family or others who share your values. Those few others who do not like the county system are either afraid to speak out, for good reason, or are run off if they do. When your life has been threatened, attempts made on your life, many other acts committed, and you see those in the local law enforcement system supporting

the criminal, something is very wrong.

Major Marker has spent his life in law enforcement and we realize that police can not be all places at all times and can not guarantee protection. However there is a problem when law enforcement repeatedly refuse to respond because the adversary is or was represented by the prosecutor and was encouraged to commit what we believe to be criminal acts by those sworn to uphold the law and defend the Constitution.

One of the seven counts in our complaint was negligence, and I believe I should explain, in part, how I see it should apply so you can see why we believe we are entitled to some of the relief at least in regards to this count: If a person has a broken step at their house and neglects to fix it they are guilty of negligence if someone is hurt. The county is in charge of the schools

and has a duty to properly prepare both their officials and students. It is a well known fact that a baby is not born knowing to hate certain types of people, it is learned behavior. It has been over 120 years since slavery was outlawed in Missouri and the 14th Amendment passed. The federal laws protecting civil rights and requiring equal protection et cetera have been on the books many years.

When such groups as the K.K.K., the C.S.A., Aryan Nations, Fellows of the Order for the Obliteration of the Lesser Species (F.O.O.L.S), The White Patriots and similar groups are known to be active in an area county officials have a duty.

In as the County runs the schools and train their officials, they have a duty to try and defuse the effects of such extremist groups and to teach tolerance, respect for the Constitution and the rights of others through the schools and

other education programs. If this duty is ignored, or only lightly touched upon and people are injured as a result the county is negligent just as surely as the person with the broken step. Such changes do not happen overnight, but they have had many years to have made some effort. Education is the long term answer that will only happen in such areas if mandated by this Court. We have been grievously hurt as a result of Dallas Counties negligence.

I hope you will also take a look at the papers we submitted to Justice Blackmun in May 1989, if that is agreeable with him. They contain a little more information about Dallas County and the problems in Missouri.

My husband is in Panama South America now and I can not stay in our own place because of the situation in Dallas County but must stay instead in a rented house.

It is sad for a military person who has devoted his life to law enforcement to be so denied equal protection under the law for his family. There is no way to resolve any of our problems without it.

Without relief from this Court not only is it unsafe to stay in our house, or let others use it, but I can not remain there safely long enough to resolve the case in state court. Our home state of Alaska is too far to travel from every few weeks to met the terms of our insurance.

Everything we had saved towards retirement and a lifetimes collection of personal items, mementos, furniture, items of high value, et cetera, are hostage there in Dallas County, except for those items stolen already.

We were shocked to learn what goes on in Dallas County, but friends have told us since that there are many places with similar problems. The answer is to

remove unconstitutional laws that help to perpetuate an unequal system, and also through education. Local government must recognize and fulfill its duties, seeking outside help if need be, instead of continuing its custom of neglect of duty.

This nation is becoming more mobile and diverse every day. Travelers. strangers, outsiders, military, and all Americans have a right to travel, live where they choose, and are entitled to equal protection where ever they may be.

The 8th Circuit Court has not allowed any of the protection under the Soldiers' and Sailors' Civil Relief Act that congress intended and instead has improperly applied the Act, has allowed violation of the Seventh Amendment of the Constitution, ignored relief due us under the default judgement we are entitled to from the County, and are in conflict with opinions of other federal courts of

appeals, state courts of last resort, this Court, and have sanctioned such a departure by a lower court, deciding important questions of federal law which has not been, but should be, settled by this Court. In the interest of justice, our interests, and future generations this case should be heard.

I hope this reply addresses fully, and clarifies those arguments raised by respondent.

CONCLUSION

For the foregoing reasons and the reasons presented in our petition for writ of certiorari, the writ of certiorari should be granted.

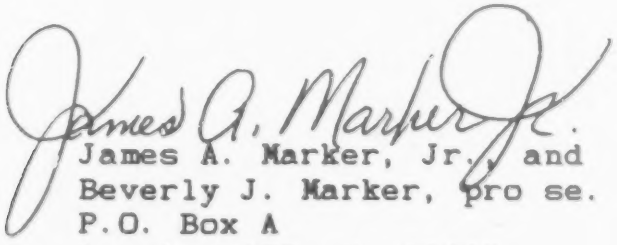
Respectfully submitted,

Beverly J. Marker

Addresses and signature of Major James A. Marker, Jr., USAF is on the next page.

This is being prepared to be used, if needed, as part of any reply or other paper my wife may need to submit to this United States Supreme Court on our behalf. I am preparing to leave the United States on Air Force Orders and business in a few days and I do not wish to leave my wife with any impediment in being able to communicate with this Court on our behalf. I have complete confidence in her and anything she prepares has my full support.

Respectfully submitted,



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